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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

19 CR 333 (LGS)

5 MICHAEL HOLLINGSWORTH,

6 Defendant.

7 -----x

8 New York, N.Y.
9 November 21, 2019
3:20 p.m.

10 Before:

11 HON. SARAH NETBURN,

12 Magistrate Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
Southern District of New York

17 KEDAR S. BHATIA

MICHAEL R. HERMAN

Assistant United States Attorneys

18 MEGAN W. BENETT

19 Attorney for Defendant

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1 (In open court)

2 THE DEPUTY CLERK: Your Honor, this is in the matter
3 of United States v. Michael Hollingsworth. Counsel, please
4 state your appearance for the record.

5 MR. BHATIA: Good afternoon. Kedar Bhatia and Michael
6 Herman for the United States.

7 THE COURT: Good afternoon.

8 MS. BENETT: Good afternoon, your Honor. Megan Bennett
9 on behalf of Michael Hollingsworth who is seated to my right.

10 THE COURT: Thank you. Good afternoon,
11 Mr. Hollingsworth.

12 THE DEFENDANT: Good afternoon, your Honor.

13 THE COURT: My name is Judge Netburn.

14 THE DEFENDANT: Good afternoon.

15 THE COURT: I have before me a consent to proceed
16 before a United States magistrate Judge on a felony plea
17 allocution that you have signed.

18 What this form says is, knowing you have the right to
19 have this plea taken by a United States district judge, you are
20 agreeing instead to have this plea taken by me, a United States
21 magistrate judge. Is that correct?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Before you signed this form, did your
24 lawyer explain it to you?

25 THE DEFENDANT: Yes, ma'am.

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1 THE COURT: It is accepted.

2 Sir, you've been charged in a three-count indictment.
3 Count One charges you with solicitation of bribes and
4 gratuities in violation of Title 18 of the United States Code,
5 Sections 666(a)(1)(B) and 2.

6 Count Two charges you with the substantive act of wire
7 fraud in violation of Title 18 of the United States Code,
8 Section 1343 and 2.

9 And Count Three charges you with conspiracy to commit
10 wire fraud in violation of Title 18 of the United States Code,
11 Section 1349.

12 I've been informed that you wish to change your plea
13 and enter a plea of guilty as to Count One. Is that correct?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Before deciding whether to accept your
16 guilty plea, I am going to ask you certain questions. It's
17 very important that you answer these questions honestly and
18 completely. The purpose of these proceedings is to make sure
19 that you understand your rights, to decide whether you are
20 pleading guilty of your own free will, and to make sure that
21 you are pleading guilty because you are guilty and not for some
22 other reason.

23 Do you understand what I am saying?

24 THE DEFENDANT: Yes, I do your Honor.

25 THE COURT: If at any point in time you don't

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1 understand my questions or you want an opportunity to speak to
2 your lawyer, please say so, because it's important that you
3 understand every question before you answer it. Will you do
4 that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Thank you. Ms. Slusher, will you swear in
7 the defendant.

8 (Defendant sworn)

9 THE DEPUTY CLERK: Please state your full name for the
10 record.

11 THE DEFENDANT: Michael Hollingsworth.

12 THE COURT: Thank you, Mr. Hollingsworth. You may be
13 seated.

14 Sir, how old are you?

15 THE DEFENDANT: 48 years of age.

16 THE COURT: Are you a United States citizen?

17 THE DEFENDANT: Yes, I am.

18 THE COURT: The reason I ask you if you are a United
19 States citizen is because if you were found not to be a
20 citizen, your conviction could have serious consequences for
21 your ability to remain in the United States.

22 For example, if you were found not to be a citizen,
23 you could be removed from the United States, denied
24 citizenship, or denied admission to the United States in the
25 future, and you would be bound by your guilty plea regardless

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1 of those immigration consequences.

2 Sir, how far did you go in school?

3 THE DEFENDANT: I got my bachelor's degree.

4 THE COURT: In what subject?

5 THE DEFENDANT: Business management.

6 THE COURT: Excellent. From what institution?

7 THE DEFENDANT: City College.

8 THE COURT: Congratulations.

9 Are you currently or have you recently been under the
10 care of a doctor or a psychiatrist for any reason?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: Have you taken any mind-altering drugs,
13 medicine or pills or consumed any alcohol in the last 24 hours?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Is your mind clear today?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you understand what's going on in these
18 proceedings?

19 THE DEFENDANT: I do, your Honor.

20 THE COURT: Does either counsel have any objection to
21 the defendant's competence to enter a guilty plea at this time?

22 MR. BHATIA: No, your Honor.

23 MS. BENETT: No, Judge.

24 THE COURT: Thank you. Sir, have you received a copy
25 of the written version of the charge against you in this case

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1 known as the indictment?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Have you read it?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand what it says?

6 THE DEFENDANT: Yes, I do, your Honor.

7 THE COURT: Do you want me to read it to you in open
8 court?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: As we've discussed, you've been charged in
11 the indictment in three counts. Count One charges you with
12 solicitation of bribes and gratuities; Count Two charges you
13 with wire fraud; and Count Three charges with you conspiracy to
14 commit wire fraud.

15 Do you understand all that?

16 THE DEFENDANT: Yes, I do your Honor.

17 THE COURT: Have you had time to talk to your attorney
18 about these charges and about how you wish to plead?

19 THE DEFENDANT: Yes, I have.

20 THE COURT: Has she told you the consequences of
21 pleading guilty?

22 THE DEFENDANT: Yes, she did.

23 THE COURT: Are you satisfied with your attorney's
24 representation of you?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Sir, I am now going to explain certain
2 Constitutional rights that you have. These are rights that you
3 will be giving up if you enter a guilty plea. Please listen
4 carefully to what I am about to say, and if you don't
5 understand something, please stop me and your attorney or I
6 will explain the matter more fully. Okay?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Under the Constitution and the laws of the
9 United States, you have the right to plead not guilty to the
10 charges contained in this indictment. Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: If you pled not guilty, you would be
13 entitled under the Constitution to a speedy and public trial by
14 a jury of those charges. At that trial you would be presumed
15 innocent, and the government would be required to prove you
16 guilty beyond a reasonable doubt before you could be found
17 guilty. That means that you would not have to prove that you
18 were innocent, and you would not be convicted unless a jury of
19 12 people agreed unanimously that you are guilty beyond a
20 reasonable doubt.

21 Do you understand that?

22 THE DEFENDANT: Yes, I do, your Honor.

23 THE COURT: If you decide to go to trial, at that
24 trial and at every stage of your case you would have the right
25 to be represented by an attorney. If you could not afford an

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1 attorney, one would be appointed to represent you at the
2 government's expense and at no cost to you. If you retained an
3 attorney and ran out of money, an attorney could be appointed
4 to continue to represent you.

5 When an attorney is appointed to represent you, that
6 attorney is appointed to represent you for all purposes, and
7 not just for a guilty plea. So your decision to plead guilty
8 here today should not depend on whether you can afford to hire
9 an attorney.

10 Do you understand that?

11 THE DEFENDANT: I do, your Honor.

12 THE COURT: During a trial, the witnesses for the
13 prosecution would have to come to court and testify in your
14 presence where you could see and hear them, and your lawyer
15 could cross-examine those witnesses. And if you wanted, your
16 lawyer could offer evidence on your behalf. You would be able
17 to use the court's power to compel witnesses to come to court
18 and testify in your defense, even if they did not want to come.

19 Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: At a trial you would have the right to
22 testify in your own defense if you wanted to, but you would
23 also have the right not to testify. And if you chose not to
24 testify, that could not be used against you in any way. No
25 inference or suggestion of guilt could be made from the fact

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1 that you did not testify.

2 Do you understand that?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: If you were convicted at trial, you would
5 have the right to appeal that verdict to a higher court. Do
6 you understand that?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: As I said before, you have the right to
9 plead not guilty. Even right now, even as you sit here today,
10 for the purposes of entering a guilty plea, you have the right
11 to change your mind, persist in your not guilty plea and
12 proceed to trial.

13 But if you do plead guilty and I accept your plea, you
14 will give up a trial and all of the other rights that go with
15 it. If you plead guilty, there will be no trial. All that
16 will remain to be done will be to impose a sentence. You and
17 the government will have a chance to make arguments about what
18 that sentence should be, but there will not be any further
19 trial to determine whether you are guilty or not guilty of the
20 charges to which you pled guilty.

21 Do you understand that?

22 THE DEFENDANT: I do, your Honor.

23 THE COURT: Do you understand that the decision as to
24 the appropriate sentence in this case will be entirely up to
25 the sentencing judge, and that that judge will be limited only

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1 by what the law requires? This means that even if you are
2 surprised or disappointed by your sentence, you will still be
3 bound by your guilty plea.

4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Finally, if you do plead guilty, you are
7 also giving up your right not to incriminate yourself, and I
8 will ask you questions about what you did in order to satisfy
9 myself that you are actually guilty. By pleading guilty you
10 are admitting to your factual as well as legal guilt. Do you
11 understand that?

12 THE DEFENDANT: I do, your Honor.

13 THE COURT: You said earlier that you had read the
14 indictment containing the charges in this case and specifically
15 with respect to Count One, the solicitation of bribes and
16 gratuities charge. What I am going to do you now is ask the
17 assistant United States attorney to state the elements of that
18 charge. The elements are the things that the government would
19 have to prove beyond a reasonable doubt if the case were to
20 proceed to trial.

21 Counsel.

22 MR. BHATIA: Your Honor, at trial, the government
23 would be required to prove beyond a reasonable doubt that:
24 First, on or about the time alleged in the indictment, the
25 defendant was an agent of the National Railroad Passenger

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1 Corporation, more commonly known as Amtrak. Second, in a
2 one-year period around the time of the alleged offense, Amtrak
3 received federal funds in excess of \$10,000. Third, that the
4 defendant solicited or demanded or accepted or agreed to accept
5 something of value such as a payment from another person.
6 Fourth, that the defendant acted corruptly with the intent to
7 be influenced with respect to a business or transaction of
8 Amtrak. And finally, that the value of the business or
9 transaction to which the payment related was at least \$5,000.
10 And the government would also be required to prove venue by a
11 preponderance of the evidence.

12 THE COURT: Thank you. Sir, I am now going to tell
13 you about the maximum possible penalty for this crime. The
14 maximum means the most that could possibly be imposed. It does
15 not necessarily mean this is what you will receive. But you
16 have to understand that by pleading guilty here today, you are
17 exposing yourself to any combination of punishments up to the
18 maximum that I am about to describe. Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: First I am going to tell you about the
21 possible restrictions on your liberty.

22 With respect to Count One, the maximum term of
23 imprisonment is 10 years, and there is a maximum term of
24 supervised release of three years. Supervised release means
25 that if you are sentenced to prison, and thereafter released

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1 from prison, you may be subject to supervision by the probation
2 department. You should understand that if you are placed on
3 supervised release and then you violate any of the terms or
4 conditions of that release, the district judge that sentenced
5 you can revoke the term of supervised release and return you to
6 prison without giving you any credit for the time you spent on
7 supervised release.

8 Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Second, in addition to these restrictions
11 on your liberty, the maximum possible punishment also includes
12 certain financial penalties. In this case the maximum
13 allowable fine is \$250,000. Then there is also a mandatory
14 special assessment of \$100 that must be imposed for the count
15 of conviction.

16 Sir, has anyone threatened you or coerced you in any
17 way to try to get you to plead guilty?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: Has anyone, other than the prosecution,
20 and solely by way of this written plea agreement, promised you
21 or offered you anything to get you to plead guilty?

22 THE DEFENDANT: No your Honor.

23 THE COURT: As I just referenced, there is a plea
24 agreement between you and the government concerning this plea.
25 Is that correct?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Have you read this plea agreement?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Have you had an opportunity to discuss it
5 with your lawyer?

6 THE DEFENDANT: Yes, I have.

7 THE COURT: Have you signed this plea agreement?

8 THE DEFENDANT: Yes, I have.

9 THE COURT: Did you read it and discuss the terms with
10 your lawyer before you signed it?

11 THE DEFENDANT: Yes, I have.

12 THE COURT: Do you understand its terms?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: It appears that you and the government
15 have agreed as to the appropriate calculation of your sentence
16 under the sentencing guidelines. Is that correct?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And that you and the government have
19 stipulated to a guidelines range of four to 10 months'
20 imprisonment; is that correct?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: You've also agreed and stipulated to a
23 fine range of \$2,000s to \$20,000; is that correct?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: In this agreement, you and the government

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1 have agreed that neither party will seek a departure or an
2 adjustment pursuant to the sentencing guidelines that's not
3 otherwise set forth in this agreement. Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: However, this agreement does allow you and
6 the government to seek a sentence that is outside of the
7 stipulated guidelines range, based upon the sentencing factors
8 which you can find at Title 18 of the United States Code,
9 Section 3553(a).

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: In this agreement, you are admitting to
13 the forfeiture allegation with respect to Count One, and you've
14 agreed to the entry of a money judgment in the amount of \$200.
15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: In addition, this agreement has limited in
18 certain respects your ability to appeal from your conviction
19 and sentence. Specifically, you've agreed that you will not
20 file a direct appeal or bring a collateral challenge, sometimes
21 called a habeas motion, or seek a sentence modification so long
22 as your sentence is within or below the stipulated guidelines
23 range of four to 10 months' imprisonment.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: You've also agreed that you will not
2 appeal a term of supervised release that is less than or equal
3 to the statutory maximum of three years. Do you understand
4 that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: You've agreed not to appeal any fine that
7 is less than or equal to \$20,000, and to not appeal any
8 forfeiture amount that is less than or equal to \$200. Do you
9 understand all of that?

10 THE DEFENDANT: I do, your Honor.

11 THE COURT: The most important thing for you to
12 understand is that the terms of this plea agreement, including
13 any recommendations or calculations related to sentencing, are
14 not binding on the sentencing judge. And that the Court may
15 reject these calculations and recommendations without
16 permitting you to withdraw your guilty plea, and then could
17 impose a more severe punishment.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: The sentencing judge is required to make
21 her own independent calculation under the sentencing guidelines
22 and then impose a sentence based on what she believes is the
23 appropriate sentence for you, even if it is different from the
24 one that is set forth in this agreement. Do you understand
25 that?

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1 THE DEFENDANT: I do, your Honor.

2 THE COURT: In determining that sentence, the Court
3 will consider, in addition to the guidelines and possible
4 departures from those guidelines, all of the factors that are
5 set forth in the sentencing statute which I referenced earlier,
6 and which you can find at Title 18, United States Code, Section
7 3553(a). Those factors include the nature and circumstances of
8 the offense, and the history and characteristics of you, the
9 defendant, the need for the sentence imposed, the kinds of
10 sentences that are available, the sentencing range provided
11 under the guidelines, need to avoid sentencing disparities, and
12 the need to provide restitution to victims.

13 In addition, the Court will consider the presentence
14 report which is prepared by the probation department in advance
15 of your sentencing. Before you are sentenced, you and the
16 government will have an opportunity to challenge the facts that
17 are reported by the probation officer.

18 Mr. Hollingsworth, now that you've been advised of the
19 charge against you, the possible penalties that you face, and
20 the rights that you are giving up, is it still your intention
21 to plead guilty to Count One of the indictment?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: So with respect to Count One of the
24 indictment, how do you plead?

25 THE DEFENDANT: Guilty.

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1 THE COURT: Can you tell me in your own words what you
2 did to make you believe that you are guilty of that charge.

3 MS. BENETT: Your Honor, Mr. Hollingsworth and I
4 worked together to write out his allocution which was then
5 typed up for him. With the Court's permission, he'll read from
6 that, but it is his own words.

7 THE COURT: I'm happy to have you read from it. I may
8 ask you questions afterwards.

9 May I encourage you to read slowly.

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Thank you.

12 THE DEFENDANT: In November 2017, I was subcontracted
13 for ADTS, a company that coordinated the collection of urine
14 and hair samples from job application undergoing drug testing
15 prior to receiving an offer of employment with Amtrak. Part of
16 my job was to send the samples to the laboratory that were
17 performing drug tests on the samples. My office was located in
18 Manhattan.

19 The month of the individual seeking employment with
20 Amtrak named Naeem Martin twice came to my office in connection
21 with -- in connection with collecting a hair sample for a drug
22 test. The second time Martin brought with him another person
23 from whom I took a hair sample. I submitted the sample -- I
24 submitted the other person hair sample to the laboratory for
25 testing along with the chain of custody from Martin Amtrak

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1 preemployment test.

2 At the time that I did that, I knew that it was
3 improper to submit the Amtrak chain of custody form identifying
4 Martin with a hair sample from someone else collected.

5 After I already -- after I already collected the hair
6 sample from another individual to send to the laboratory for
7 testing, Martin offered me \$200 cash for doing so which I
8 accepted.

9 THE COURT: Thank you. Mr. Martin was applying for a
10 job with Amtrak?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Any other questions you'd like me to ask
13 the defendant?

14 MR. BHATIA: If we can have a moment, your Honor.

15 THE COURT: Sure.

16 MR. BHATIA: No other questions, your Honor.

17 THE COURT: I assume the government will proffer that
18 during the relevant period Amtrak received the appropriate
19 amount of federal funding?

20 MR. BHATIA: That's right, your Honor. During the
21 relevant period one year before and after November 2017 Amtrak
22 received more than \$10,000 in federal funding.

23 THE COURT: I assume you'll also proffer that the
24 value of the job at Amtrak was more than \$5,000?

25 MR. BHATIA: The value of the job was more than

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1 \$5,000.

2 THE COURT: Do you believe that is a sufficient
3 allocution?

4 MR. BHATIA: Yes, your Honor. And I would just like
5 to note for the record, at trial the government's evidence
6 would consist of drug testing records, it would consist of a
7 consensual audio or video recording, witness testimony
8 including testimony from immunized witnesses, and toll records,
9 and finally geolocation data.

10 THE COURT: Sir, on the basis of your responses to my
11 questions and my observations of your demeanor, I find that you
12 are competent to enter a guilty plea. I am satisfied that you
13 understand your rights, including your right to go to trial,
14 that you are aware of the consequences of your plea, including
15 the sentence that may be imposed, that you are voluntarily
16 pleading guilty, and that you have admitted that you are guilty
17 as charged in Count One of the indictment.

18 For these reasons I'll recommend to District Judge
19 Schofield that she accept your plea of guilty as to Count One
20 of the indictment.

21 I assume the government will move to dismiss any open
22 counts at the time of sentencing?

23 MR. BHATIA: That's right.

24 THE COURT: I will direct the government to order a
25 copy of the transcript and submit it to Judge Schofield so she

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1 may act on my recommendation. I assume she has not yet set a
2 sentencing date.

3 MR. BHATIA: She has not.

4 THE COURT: Would you like a control date for three
5 months out?

6 MR. BHATIA: That would be good.

7 THE COURT: So let's set a control date for February.

8 MS. BENETT: That's just a control date? Because I
9 will not be in town that date.

10 THE COURT: Just a control date. We'll put
11 February 21 as the control date, and you'll reach out to Judge
12 Schofield's chambers in order to schedule a date that's
13 convenient for everybody. I'll direct that the presentence
14 report be prepared.

15 Can you deliver the case summary to probation within
16 14 days?

17 MR. BHATIA: We will.

18 THE COURT: And counsel, can you and your client be
19 available in the next 14 days to be interviewed by probation?

20 MS. BENETT: Yes. And just for the record, I want to
21 be present for the interview.

22 THE COURT: Okay. Noted. And if you can just reach
23 out to them. There is a holiday next week. If you can
24 schedule it in the next 14 days.

25 MS. BENETT: It may be difficult to actually get

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1 everybody together in 14 days.

2 THE COURT: That's fine. Just schedule in the next 14
3 days.

4 Any objections to continuing the present bail?

5 MR. BHATIA: No objections.

6 THE COURT: Sir, all of the conditions on which you
7 have been released up until now continue to apply, and a
8 violation of those conditions can have very serious
9 consequences, including revocation of bail and prosecution for
10 bail jumping. Do you understand that?

11 THE DEFENDANT: I do, your Honor.

12 THE COURT: If you commit an offense while you are
13 released on bail, you may be subject to a more severe
14 punishment than you would receive if you committed the same
15 offense at any other time. Of course if you commit a crime or
16 violate the terms of the plea agreement in any way, you may be
17 subject to revocation of that plea agreement by the government
18 as set forth in the letter.

19 Anything further from either side?

20 MR. BHATIA: Nothing further from the government.

21 MS. BENETT: Nothing from the defense, your Honor.

22 THE COURT: Thank you all.

23 (Adjourned)
24
25